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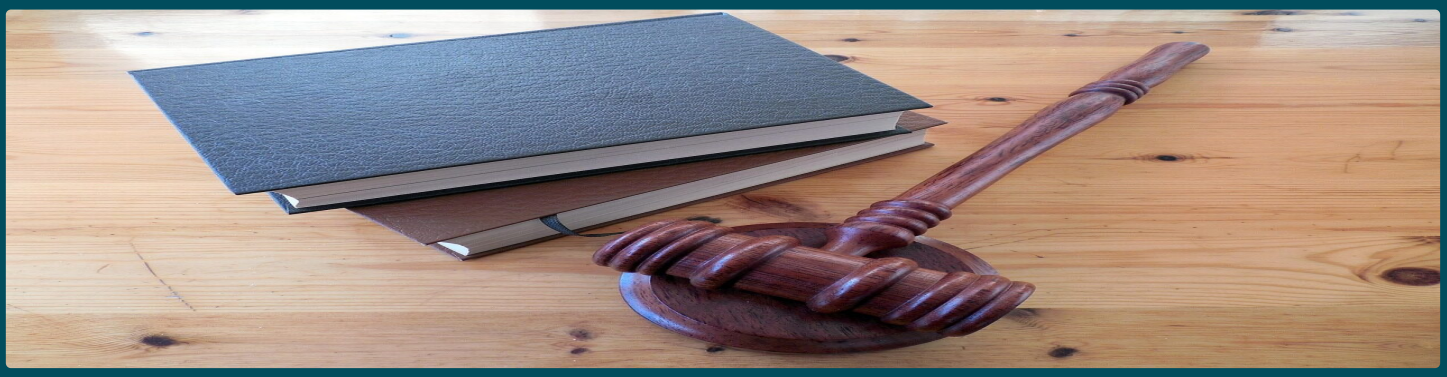

ARBITRATION AND CONCILIATION

# The Grammar Of Justice: Does ‘Can’ Mean ‘Must’ In The World Of Arbitration?

AUTHOR Supriya Bhosale

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In the intricate dance of international commerce, a single word can be the difference between a swift resolution and a decade-long courtroom drama. In the landmark judgment of **Nagreeka Indcon Products Pvt. Ltd. v. Cargocare Logistics (India) Pvt. Ltd. (2026)**, the Supreme Court of India was forced to play the role of a linguist.

The question was deceptively simple: When a contract says parties **"can"** settle disputes via arbitration, is it a binding mandate or merely a polite suggestion?

## The Anatomy of a Dispute: From Aluminium Foils to Legal Foils

The case began with a straightforward commercial transaction. Nagreeka Indcon, a manufacturer of aluminium containers, contracted Cargocare Logistics to transport goods to the USA.

When a dispute arose over a "bill of lading" and a missing payment of approximately **USD 28,000**, Nagreeka pointed to **Clause 25** of their agreement to demand arbitration. The clause read:

> *"The contract evaluated hereby or contained herein shall be governed by and construed according to Indian Laws. Any difference of opinion or dispute thereunder **can** be settled by arbitration in India or a place mutually agreed with each party appointing an arbitrator."*

While Nagreeka viewed this as a clear green light for an arbitral tribunal, Cargocare saw it as a yellow light — an option that required **mutual consent** at the time of the dispute.

The High Court agreed with Cargocare, leading the manufacturer to appeal to the highest court in the land.

## The Linguistic Litmus Test: Capacity vs. Mandate

Justice Sanjay Karol's judgment serves as a masterclass in **Legal Linguistics**. The Court delved into the etymology and dictionary definitions of the word "can," contrasting it with the heavyweights of legal drafting: "shall" and "may."

| Word | Legal Interpretation in Contracts |
|---|---|
| **Shall** | A mandatory command; an absolute obligation to act. |
| **May** | A discretionary power; typically denotes permission but not a requirement. |
| **Can** | Refers to **capacity, capability, or possibility**. It indicates what is possible to happen, not what must happen. |

The Court noted that while "shall" signals a mandate, "can" merely flags a potentiality. By using "can," the parties acknowledged that arbitration was an available route, but they did not close the door on other avenues, such as **Civil Courts**.

## The Doctrine of Party Autonomy

A fundamental pillar of Alternate Dispute Resolution (ADR) is **Party Autonomy**. The Court emphasized that arbitration is a creature of contract; it exists only because parties voluntarily surrender their right to go to a public court.

The Court invoked the Latin maxim ***Ex praecedentibus et consequentibus optima fit interpretatio*** — the best interpretation is made from the context.

Justice Karol reasoned that if the Court forced a party into arbitration based on a vague "can," it would be **"imputing an obligation"** that was never intended. To be valid, an arbitration agreement must disclose a **determination and obligation**, not just a "tentative arrangement to explore" the idea.

## The Seven-Point Checklist: What Makes an Arbitration Clause Binding?

The judgment reiterated the essential attributes of a **valid arbitration agreement**, drawing from the classic *K.K. Modi* and *Jagdish Chander* precedents:

1. **Binding Nature:** The decision must be final.
2. **Consent-Based:** Jurisdiction must derive from the parties' clear agreement.

3. **Substantive Rights:** The tribunal must determine actual legal rights.
4. **Impartiality:** The process must be judicial and fair.
5. **Enforceability:** The intent to refer must be enforceable by law.
6. **Formulated Dispute:** The agreement should cover existing or future disputes.
7. **Obligation (The "Golden Rule"):** The language must show a "must," not a "maybe."

## The Final Verdict: A Lesson for Drafters

The Supreme Court dismissed the appeal, holding that **Clause 25 was not a binding arbitration agreement**. Because the clause only indicated a "future possibility" of arbitration, it required a fresh agreement between the parties once the dispute actually arose.

Since Cargocare refused to agree, the "can" remained a mere possibility that never became a reality.

## The Takeaway for the Legal Community

For law students and practitioners, this case is a stark reminder of the **"Doctrine of Precision."** In the world of 2026 commerce:

- If you want a mandate, use **"Shall."**
- If you want a choice, use **"May."**
- If you use **"Can,"** you are merely inviting a future argument about whether you actually meant anything at all.

This judgment reinforces that the Supreme Court will not rescue a party from **"shabby drafting."** Justice, in this instance, was found in the literal dictionary, proving that sometimes, the most powerful tool in a lawyer's arsenal is a firm grasp of basic grammar.

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## Reference

**[2026 INSC 384] NAGREEKA INDCON PRODUCTS PVT. LTD. Vs. CARGOCARE LOGISTICS (INDIA) PVT. LTD.**

## Related Practice Areas

**Alternative Dispute Resolution (ADR)**